

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2006 DEC -4 A 9:40

C&J ASSOCIATES PEST CONTROL)
and CURTIS DUNCAN,)

PLAINTIFFS,)

VS.)

BOB RILEY, et al.,)

DEFENDANTS.)

2:06-CV-884-MEF

DAVID HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

MOTION TO DISMISS AND RESPONSE TO PLAINTIFF'S
MOTION FOR DEFAULT

Comes now Defendant, Bruce Alverson, by and through counsel, and files this Motion to Dismiss pursuant to the Court's Order and files this response to Plaintiff's Motion for Default as follows:

1. On October 31, 2006, Defendant Bruce Alverson filed his Motion for Extension of Time to File an Answer.

2. On November 14, 2006, said motion was granted extending the time to answer to November 17, 2006. Although only three (3) days were granted, Defendant did not receive notice of said Order.

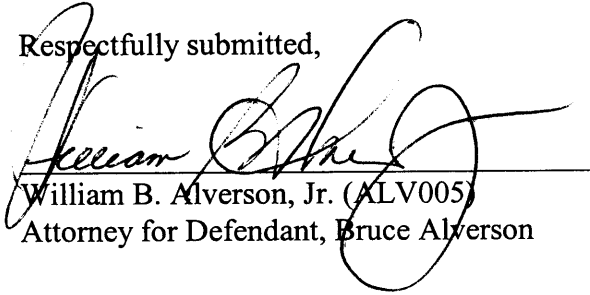
3. Due to a clerical error, Defendant Alverson was not notified of the Order nor was counsel for Defendant Alverson entered.

4. Counsel for Defendant Alverson was added on November 30, 2006, as attorney of record. (See Affidavit of Tina Ballard). As a result, Defendant Alverson did not receive the Order granting the extension of time nor did I receive an Order stating at what time an answer should be filed.

5. All motions may be moot based upon the Court's Order of November 8, 2006, requiring the Plaintiff to secure a licensed attorney.

WHEREFORE, based upon the foregoing, movant requests an Order from the Court denying Plaintiff's Motion for Default and allowing the submission of Defendant Alverson's Motion to Dismiss.

Respectfully submitted,



William B. Alverson, Jr. (ALV005)
Attorney for Defendant, Bruce Alverson

OF COUNSEL:

ALBRITTONS, CLIFTON, ALVERSON,
MOODY & BOWDEN
Post Office Drawer 880
Andalusia, Alabama 36420
334-222-3177

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing upon all parties in this cause by placing a copy of same in the United States mail, postage prepaid, addressed as follows on this the 1st day of December, 2006:

Mr. Curtis Duncan
C&J Associates, Pest Control
Post Office Box 8186
Montgomery, Alabama 36110

Mr. Richard H. Cater
State Finance Director's Office
State Capitol
N-105
600 Dexter Avenue
Montgomery, Alabama 36130


Mr. Robert J. Russell, Sr.
Department of Agriculture & Industries
Post Office Box 3336
1445 Federal Drive
81 Watson Circle
Montgomery, Alabama 36107

Mr. Scott L. Rouse
Office of the Governor
State Capitol, Suite NB-05
600 Dexter Avenue
Montgomery, Alabama 36130

Mr. Benjamin H. Albritton
Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Mr. Robin G. Laurie
G. Lane Knight
Balch & Bingham, LLP
Post Office Box 78
Montgomery, Alabama 36101

Mr. William L. Tucker
Page, Scrantom, Sprouse,
Tucker & Ford, P.C.
Synovus Centre
1111 Bay Avenue, Third Floor
Columbus, Georgia 31901


OF COUNSEL

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DEFENDANTS.)

AFFIDAVIT

Comes now the undersigned, Tina Ballard, and after being duly sworn does hereby testify as follows:

1. My name is Tina Ballard. I am a resident of the State of Alabama and over twenty-one (21) years of age. This Affidavit concerns information of which I have personal knowledge.

2. I am a legal secretary to William B. Alverson, Jr., attorney for Defendant Bruce Alverson.

3. I contacted the Clerk's Office on November 30, 2006, and verified that William B. Alverson, Jr., had not been listed as the attorney of record for Defendant Bruce Alverson. I was informed that there had been a clerical error.

4. On November 30, 2006, William B. Alverson was listed as attorney of record for Defendant Bruce Alverson.

Further saith the Affiant not.


Tina Ballard

STATE OF ALABAMA}
COVINGTON COUNTY}

I, Heather Howard, a Notary Public in and for said County, in said State, hereby certify that Tina Ballard, whose name is signed to the foregoing Affidavit and who is

known to me, acknowledged before me under oath on this day that after first being duly sworn and after being informed of the contents of this Affidavit, that the same is true. She then executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this, the 1st day of December, 2006.

Heather Howard
NOTARY PUBLIC

My commission expires:

7-4-2010
(NOTARIAL SEAL)